

Town of Amherst, Massachusetts

Board of Health

Tobacco Control Regulations Prohibiting:

- ◆ **Tobacco Smoking in Public Places
And Places of Employment**
- ◆ **Youth Access to Tobacco Products**

SECTION 1 - PURPOSE	3
SECTION 2 - DEFINITIONS.....	3
SECTION 3 - PROHIBITION OF SMOKING IN PUBLIC PLACES; PROHIBITION OF SMOKING IN WORK PLACES; EXCEPTIONS; SIGNAGE.....	4
SECTION 4 PROHIBITION OF DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS; IDENTIFICATION REQUIRED; POSTING OF STATE LAW; PERMIT; OUT OF PACKAGE SALES; VENDING MACHINES; SELF SERVICE DISPLAYS; FREE DISTRIBUTION; DELIVERY SERVICE.	5
SECTION 5 - OTHER APPLICABLE LAWS.....	7
SECTION 6 - PUBLIC EDUCATION.....	7
SECTION 7 - ENFORCEMENT.....	7
SECTION 8 - NON-CRIMINAL DISPOSITION.....	8
SECTION 9 - FINES, VIOLATIONS AND PENALTIES.....	8
SECTION 10 - SEVERABILITY	10
SECTION 11 - EFFECTIVE DATE	10

Make smoking history.

SECTION 1 - PURPOSE

The Board of Health of Amherst does hereby find that:

Conclusive evidence indicates that intentional and unintentional inhalation of tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, allergies, and irritations to the eyes, nose and throat. Environmental tobacco smoke (ETS) has been designated as a Class A carcinogen by the Environmental Protection Agency (1993). There are no known safe levels of exposure to environmental tobacco smoke.

Further the Board of Health finds cigarette smoking and other tobacco use by minors to be a continuing problem with grave public health consequences. More than 90% of all smokers begin smoking before age eighteen and more than 3,000 young people begin to smoke every day in this nation. The average age at which Massachusetts youth are beginning to smoke is age 12. In recognition of the Surgeon General's finding that nicotine is as addictive as cocaine or heroin, action is needed to curtail the access of minors to cigarettes and other tobacco products.

Accordingly, the Board of Health declares that the purposes of this regulation are:

(1) to protect the public health and welfare by prohibiting smoking in public places and work places; (2) to guarantee the right of non-smokers to breathe smoke-free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke; (3) to implement strict regulations to prevent the illegal sale of cigarettes and other tobacco products to minors.

These regulations are adopted pursuant to Massachusetts General Laws, Chapter 111, Section 31.

SECTION 2 - DEFINITIONS

As used in these regulations:

- [A] **Eating and Drinking Establishment** means any establishment which serves food and/or beverages alcoholic or non-alcoholic, to patrons and guests for consumption on the premises and/or for take-out. Without intending to limit the generality of the foregoing, such "eating and drinking establishments" shall include but not be limited to all restaurants, bars, taverns, pubs, cafeterias, coffee shops, sandwich stands, bakeries and take out restaurants.
- [B] **Employee** means any person who performs services for an employer in return for wages or any other consideration and/or any person who volunteers their services to any entity without compensation.
- [C] **Employer** means any individual, partnership, association, corporation, trust, or other legal entity, including the Town of Amherst or any agency thereof, which uses the services of one (1) or more employees.
- [D] **Enclosed Area** means any space in a structure that has a roof.
- [E] **Environmental Tobacco Smoke (ETS)** means tobacco smoke in the ambient atmosphere composed of exhaled smoke and/or the smoke from the burning end of a cigarette, cigar or pipe.
- [F] **Identification** means United States Military ID, Driver's License, State ID or passport each of which shall contain a photograph and date of birth of the bearer.
- [G] **Permit Holder** means the name of the applicant located on the Application for Permit to Operate a Food Service Establishment and/or the name of the applicant located on the Tobacco Sales Permit.

- [H] **Person** means and shall include an individual, corporation, trust, partnership, (including general partnership, limited partnership, and limited liability partnership) and a limited liability company.
- [I] **Private Club** means any establishment which limits admission to members of such establishment and guests of such members and which excludes admission by the general public. Any such private club that holds a liquor license must do so as a private club.
- [J] **Public Place** means an enclosed area which is or may be open to and used by the general public, including but not limited to: any and all eating and drinking establishments; museums; libraries; educational facilities; clinics; nursing homes; auditoriums; indoor sports arenas; municipal buildings and vehicles; inn, hotel and motel conference/meeting rooms and lobbies; public and private assembly rooms; all polling places; all buses, trains, taxis and other means of public mass transit while operating within the boundaries of the Town of Amherst; retail stores and malls; all businesses and non-profit entities patronized by the public; attorneys; realtors and other offices; banks; Laundromats; haircutting establishments; movie theaters; bookstores; child care or health care facilities; public restrooms; all lobbies, hallways and other common areas in multiple-unit residential and/or commercial facilities; stairwells, halls, entrances, elevators accessible to the public and all other enclosed areas available to the general public.
- [K] **Self Service Displays** means displays from which individual packs or cartons of tobacco products may be removed from the display by the purchaser thereof.
- [L] **Smoking** means lighting, inhaling or exhaling or burning any cigar, cigarette, pipe, or other tobacco product or clove cigarette or carrying any lighted cigar, cigarette, pipe, or other tobacco product or clove cigarette in any form.
- [M] **Smoke-Free Area** means any area designated and posted by the person or other legal entity in control thereof as a place where smoking by patrons, employees, or others is prohibited.
- [N] **Tobacco Sales Permit** means the permit required by Section 4 [D] of these Regulations.
- [O] **Tobacco Vending Machine** means any machine or device used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of bills, coins, trade checks, or slugs.
- [P] **Work Place** means any enclosed area in which one (1) or more employees are employed. Included within the work place shall be all common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, shop floors and garages, and vehicles controlled by the employer or used in furtherance of the employer's business.

SECTION 3 - PROHIBITION OF SMOKING IN PUBLIC PLACES; PROHIBITION OF SMOKING IN WORK PLACES; EXCEPTIONS; SIGNAGE

- [A] Smoking shall be, and hereby is, prohibited in all public places within the Town of Amherst.
- [B] Smoking shall be, and hereby is, prohibited in all work places within the Town of Amherst.
- [C] "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted at every public entrance to every building or other place where smoking is prohibited by these regulations by the individual or other legal entity having control of such building or other place.

[D] Exceptions: Notwithstanding the generality of the application of Sections 3[A] through 3[C], inclusive, the following shall not be subject to the regulations contained therein:

1. Private residences, except when used as a work place.
2. Performers upon a stage, provided that the smoking is part of a theatrical production. It shall be required that the Producer be responsible to inform the public through all of her/his publicity and advertisement that smoking will take place.
3. A work place which employs **only** the owner and **no other** employee, provided that:
 - a) the work place is not used to meet with or receive customers or clients, and
 - b) the work place does not share a ventilation system with any other work place or public place.
4. Up to fifty percent of all Inn, Hotel and Motel Rooms permanently designated as smoking rooms.
5. Private Clubs.

Notwithstanding any other provision of these regulations, any person who controls any work place may declare that entire establishment or facility as a smoke-free area or establishment.

[E] The penalties and fines for violation of the regulations set forth in Section 3 of these Regulations shall be as set forth in Section 9 of these Regulations, as they may be amended from time to time.

**SECTION 4 PROHIBITION OF DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS;
IDENTIFICATION REQUIRED; POSTING OF STATE LAW; PERMIT; OUT OF PACKAGE SALES;
VENDING MACHINES; SELF SERVICE DISPLAYS; FREE DISTRIBUTION; DELIVERY SERVICE.**

- [A] The distribution of any cigarette, cigar, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen (18), by any holder of a tobacco sales permit or his/her/its agents or employees or by a person not being the parent or guardian of such person under the age of eighteen (18), shall be, and hereby is, prohibited.
- [B] All holders of a Tobacco Sales Permit, in person or through his/her/its agents or employees, shall require identification to verify that no person purchasing any tobacco product is younger than eighteen (18) years of age.
- [C] In accordance with Massachusetts General Laws, Chapter 270, Section 7, a copy of Massachusetts General Laws Chapter 270, Section 6 shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail.

The notice to be posted shall be provided by the Massachusetts Department of Public Health and made available from the Amherst Health Department. Such notice shall be posted on every cash register, shall directly face the purchaser, and shall not be obstructed from view. All such signs shall be placed at a height not less than four (4) feet or greater than nine (9) feet from the floor. Such notice shall be at least forty-eight (48) square inches at the cash register which receives the greatest volume of cigarette package sales and at least nine (9) square inches at all other cash registers. All notices shall be placed in such a manner as to be readily seen by a person standing at or approaching the cash register. The wording of this sign shall be as follows (or such other language as may from time to time be determined by the Massachusetts Department of Public Health):

"Sale of Cigarettes (or any tobacco product) to persons under age 18 is illegal (MGL 270 S 6,7) and whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of eighteen or not being his parent or guardian, gives a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of eighteen shall be punished by a fine of not less than one hundred dollars for the first offense, not less than two hundred dollars for a second offense and not less than three hundred dollars for any third or subsequent offense."

[D] It shall be, and hereby is, unlawful for any person to sell cigarettes or other tobacco products unless that person holds and maintains a valid "Tobacco Sales Permit" issued by the Amherst Health Department for each location for sale of such products.

1. The term of the permit shall be no more than one year commencing on February 1 and expiring on January 31 of each year provided that the permit holder complies with the provisions of these regulations. The fee for a "Tobacco Sales Permit" shall be one hundred ten dollars (\$110.00) for each location for each year or part thereof, or such other fee that the Board of Health may from time to time determine. The permit shall allow the permit holder to sell tobacco products directly to customers on the premises at the address named on the permit.
2. The permit holder shall post signage received from the Amherst Health Department as a condition of holding a valid "Tobacco Sales Permit" as set forth in Section 4[C]. Any permit holder not posting said signage shall be in non-compliance and, therefore, subject to penalties per Section 9 of these regulations.
3. No "Tobacco Sales Permit" shall be transferred without the approval of the Board of Health. In the case of a proposed change in permit holder, a transfer of permit application must be completed and approved by the Board of Health in advance of any such transfer. A Permit Holder whose permit to sell tobacco products has been suspended may not apply for a transfer of the permit until the expiration of any period of suspension.
4. "Permit Holder" on applications for Tobacco Sales Permits shall be as follows:

If a Sole Proprietor proposes to sell tobacco products, the Sole Proprietor shall be the Permit Holder. The Sole Proprietor shall complete the permit application and initial and sign page 2.

If a General Partnership proposes to sell tobacco products, all of the Partners shall be the Permit Holder. The permit application must be completed and each Partner shall initial and sign copies of page 2 of the permit application. All Local Managers of a partnership-owned business must also sign and initial page 2 of the permit application. Each Partner and all Local Managers shall be fully responsible for compliance with the Amherst Tobacco Control Regulations whether or not on site at the time of any alleged violation.

If a Limited Partnership proposes to sell tobacco products, the Limited Partnership shall be the Permit Holder. Each General Partner of the Limited Partnership shall complete the permit application and shall initial and sign copies of page 2 of the permit application. All Local Managers of a limited partnership-owned business must also sign and initial copies of page 2 of the permit application. Each such General Partner and all Local Managers shall be fully responsible for compliance with the Amherst Tobacco Control Regulations whether or not on site at the time of any alleged violation.

If a Corporation proposes to sell tobacco products, the Corporation shall be the Permit Holder.

The President and Treasurer of the Corporation shall sign and initial copies of page 2 of the permit application. All Local Managers of a corporate-owned business must also sign and initial separate copies of page 2 of the permit application. Each such President and Treasurer and all Local Managers shall be fully responsible for compliance with the Amherst Tobacco Control Regulations whether or not on site at the time of any alleged violation.

- [E] No person shall sell or cause to be sold, or distribute or cause to be distributed, single cigarettes or any cigarette package that contains fewer than twenty (20) cigarettes.
- [F] No person shall install or suffer or permit the installation of a vending machine to distribute or sell tobacco products within the Town of Amherst. No person shall suffer or permit a vending machine to distribute or sell tobacco products within the Town of Amherst to remain on any premises within the Town of Amherst.
- [G] No person shall sell or offer for sale, or suffer or permit the sale or the offering for sale of any tobacco product by means of a self-service or freestanding display.
- [H] No person shall distribute or furnish without charge or at less than full retail price cigarettes or other tobacco products or provide coupons for cigarettes or any tobacco products in any public place or at any event open to the public within the Town of Amherst.
- [I] No person shall sell or distribute cigarettes or any other tobacco products by delivery to customers at locations other than the location applied for and approved by the Board of Health.

SECTION 5 - OTHER APPLICABLE LAWS

These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

SECTION 6 - PUBLIC EDUCATION

The Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of these regulations to residents affected by it, and to guide owners, operators and managers in their compliance with it.

SECTION 7 - ENFORCEMENT

- [A] Notice of these regulations shall be given to all current food permit holders as well as applicants for any business license or permit from the Town of Amherst.
- [B] Enforcement of these regulations shall be implemented by the Amherst Health Director or her/his designee(s).
- [C] The Fire, Inspections Services and Health Department shall, while undertaking other lawful inspections, determine that all such establishments being inspected are in compliance with these Regulations.
- [D] Any person may file a complaint, which may, in the discretion of the complaining person, be filed anonymously, with the Board of Health in order to initiate enforcement of these regulations.

SECTION 8 - NON-CRIMINAL DISPOSITION

Any provision of these Regulations may be enforced by a non-criminal disposition as provided by Town By-Law Article VI, Section 1 (b) and MGL Chapter 40, Section 21 D. The specific penalty for each violation to be enforced pursuant to this section shall be as set forth in Section 9 below. The enforcing person(s) shall be the Health Director or his/her designees including but not limited to: the Tobacco Enforcement Agent, Police, Building Commissioner, Building Inspector, Sanitarian, Housing Inspector, Tobacco Control Coordinator, Tobacco Control Administrative Assistant.

SECTION 9 - FINES, VIOLATIONS AND PENALTIES

[A] Penalties and Fines for Violation of Section 3[A] and/or 3[B].

1. Any permit holder and/or person in control of a public place or work place:
 - a) who fails to inform patron or employee on the premises of the public place or workplace who is smoking that (1) he/she is in violation of Section 3[A] or 3[B] of these Regulations and (2) that he/she must cease the prohibited conduct or leave the premises and/or fails to take appropriate action (including requesting police assistance) to remove such person, or
 - b) whose employee, servant, contractor or agent fails to inform any patron, employee and/or other person on the premises of the public place or work place who is smoking that (1) he/she is in violation of Section 3[A] or 3[B] of these Regulations and (2) that he/she must cease the prohibited conduct or leave the premises and/or fails to take appropriate action (including requesting police assistance) to remove such person,
 - c) permits or suffers any violation of Section 3[A] and/or 3 [B] of these Regulations by any person, patron, or employee;
 - d) whose employee, servant, contractor or agent permits or suffers any violation of Section 3[A] and/or 3[B] of these Regulations by any person, patron or employee, or
 - e) who hinders or delays any authorized agent or inspector of the Amherst Board of Health in the performance of his/her duties under these Regulations, or refuses to admit or locks out any such agent or inspector from any public place or workplace in the course of the performance of his/her duties under these Regulations, or
 - f) whose employee, servant, contractor or agent hinders or delays any authorized agent or inspector of the Amherst Board of Health in the performance of his/her duties under these Regulations, or refuses to admit or locks out any such agent or inspector from any public place or work place in the course of the performance of his/her duties under these Regulations shall be subject to a fine of one hundred dollars (\$100) for the first violation. In the case of a second violation within a twenty-four (24) month period, the penalty shall be a fine of two hundred dollars (\$200). In the case of the third and any subsequent violation within a twenty-four (24) month period, the penalty shall be a fine of three hundred dollars (\$300). Each day of non-compliance with Sections 3[A] and/or 3[B] of these Regulations shall be considered a separate and distinct violation thereof.
2. For purposes of Section 9[A], 1, above, the “permit holder” shall be the individual identified on the permit application as the applicant and the individual identified thereon as the manager in charge of the permitted premises.

3. In addition to the fines set forth in Section 9[A], 1, above, violation of Section 3[A] and/or 3[B] of these regulations may result in the suspension by the Board of Health of any permit or license issued by the Board of Health for a period of two (2) days for each violation. Prior to any such suspension, the Board of Health shall provide written notice to the permit holder or licensee of the intent to hold a hearing to determine whether to suspend any Board of Health issued license(s) or permit(s). The notice shall contain the reasons for the suspension hearing and establish a date and time for the hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard, to be represented by counsel at the permit holder's expense, and to present witnesses at such hearing and shall be notified of the Board's decision and reasons in writing.
4. In addition to fines set forth in Section 9[A], 1, above, violation of Section 3[A] and/or 3[B] of these Regulations may result in suspension by the Board of health of any permit or license issued by the Board of Health for a period of two (2) days for each violation. Prior to any such suspension, the Board of Health shall provide written notice to the permit holder or licensee of the intent to hold a hearing to determine whether to suspend any Board of Health issued license(s) or permit(s). The notice shall contain the reasons for suspension hearing and establish a date and time for the hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard, to be represented by counsel at the permit holder's expense, and to present witnesses at such hearing and shall be notified of the Board's decision and reasons in writing.
5. In the case of a permit holder or licensee who has been found in violation for a third or subsequent time within a twenty-four (24) month period, the Board of Health may after hearing and notice as provided in the preceding section, revoke or decline to renew any such permit or license.

[B] Penalties and Fines for Violation of Section 4[A] through 4[I].

1. Any permit holder who permits or suffers any violation of Section 4[A] through 4[I], inclusive, of these Regulations by any person, patron or employee; shall be subject to a fine of one hundred dollars (\$100) for the first violation. In the case of a second violation within a twenty-four (24) month period, the penalty shall be a fine of two hundred dollars (\$200). In the case of the third and any subsequent violation within a twenty-four (24) month period, the penalty shall be a fine of three hundred dollars (\$300). Each day of non-compliance with Sections 4[A] through 4[I], inclusive, of these regulations shall be considered a separate and distinct violation.
2. For purposes of Section 9[B]1, above, the "permit holder" shall be the individual identified on the permit application as the applicant and the individual identified thereon as the manager in charge of the permitted premises.
3. In addition to the fines set forth in Section 9 [B], 1, above, violation of Section 4[A] through 4[I], inclusive, of these Regulations may result in the suspension by the Board of Health of any permit or license issued by the Board of Health for a period of seven (7) days for each violation. Prior to any such suspension, the Board of Health shall provide written notice to the permit holder or licensee of the intent to hold a hearing to determine whether to suspend any Board of Health license(s) or permit(s). The notice shall contain the reasons for the suspension hearing and establish a date and time for the hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard, to be represented by counsel at the permit holder's expense, and to present witnesses at such hearing and shall be notified of the Board's decision and reasons in writing. Upon suspension of such permit or license, the permit holder shall be required to remove all cigarettes and tobacco products from the permitted premises. The failure to so remove all such cigarettes and tobacco products within three (3) days of the receipt of notice of suspension of such permit or license shall constitute a separate and distinct violation of these regulations subjecting the permit holder to the penalties set forth in Section 9[B], 1 above.

4. In the case of a permit holder or licensee who has been found in violation for a third or subsequent time within a twenty-four (24) month period, the Board of Health may, after hearing and notice as provided in the preceding sub-section, revoke or decline to renew any such permit or license.

SECTION 10 - SEVERABILITY

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

SECTION 11 - EFFECTIVE DATE

These revised regulations shall take effect April 1, 1998, except that the Board of Health may vote to allow eating and drinking establishments that, as of February 1, 1998, allowed smoking to comply with these revised regulations on a date after April 1, 1998, but in no case shall such later day be after July 1, 1998.

This edition of the Tobacco Control regulations contains addendums voted on by the Board of Health on September 3, 1998 (see Section 4, [D]) and September 22, 1999 (see Section 9 [A]).

Make smoking history.